

University of Miami Law Review

Volume 54 | Number 4

Article 10

7-1-2000

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Recommended Citation

Jim Freund, *Dinner Tribute to Joe Flom*, 54 U. Miami L. Rev. 853 (2000)

Available at: <https://repository.law.miami.edu/umlr/vol54/iss4/10>

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Dinner Tribute to Joe Flom

JIM FREUND

I was pleased to be asked to join in this tribute to Joe Flom, to whose herculean rainmaking efforts over the years I owe the degree of relative affluence that enabled me to retire from the law business three years ago! Joe, thanks a million—or two . . .

By the way, you know that old axiom about “behind-every-great-man . . .” Well, it couldn’t be more accurate than in Joe’s case. Claire Flom is not only a wonderful individual, but her tell-it-like-it-is manner over the years is just what it took to keep Joe from having an impossibly swelled head.

Tonight, I won’t be talking about Joe Flom the rainmaker, or Joe the brilliant strategist, or Joe who transformed the profession and virtually remodeled the lawyer-client relationship. Nor will I regale you with tales about the Joe Flom who took our pipsqueak law firm—which had fewer than 20 lawyers when I arrived there in 1966—and catapulted it into the big time, who made us feel even back then that we could stand up to the big guys, and who never flinched from a tough assignment or a demanding client.

Rather, I want to give you a sense of what kind of lawyer this Joe Flom is, from the up-close-and-personal vantage point that I’ve enjoyed for over three decades.

Through the years, I worked closely with Joe on a number of deals, climaxing in the Federated Department Stores imbroglio in the late 1980s. That deal featured Joe at the height of his powers. When it was over, I decided to write a piece about him for one of the legal periodicals—to pass along to others the secret of his success, to uncover the keys to how he analyzed problems and come up with insightful strategies, to transmit his accumulated wisdom.

So, one Saturday, I sat in Joe’s living room and interviewed him for over two hours. When I got home and looked at my notes, I realized I didn’t have an article. As brilliant as Joe is, he couldn’t, or wouldn’t, articulate what that brilliance consisted of. He was reluctant to abstract from his performance in one case any rules that could be readily applied in other situations. And I realized then what I guess I had always surmised—that most of what Joe does is based on sheer instinct. Sure, he uses his formidable analytical skill, a stupendous memory and great judgment, but he blends them all together in a way he wouldn’t even try

to explain—the net of which is simply Joe going with his gut. And what a gut it is.

So, when that Boswellian effort didn't come off, I decided to jot down a few of my own observations on what makes Joe tick while they were still fresh in my mind a dozen years ago, and I've consulted those in preparation for tonight.

You know, most of us lawyers and business people proceed in a more-or-less orderly fashion when we're attacking a problem—perhaps even following an agenda to guide our discussion of the various sub-points under review. But not Joe. He never has an agenda, nor does he follow anyone else's. When a thought comes to Joe—and they come a mile a minute—he expresses it. In a meeting, while others are listening or daydreaming, Joe is thinking. The man is always one step ahead of everyone else—trying out fresh approaches and new ideas, keeping the rest of us off balance.

Now, not all of the ideas Joe floats are good ones, but everything that comes out of his mouth carries with it the same level of definitiveness. There's a total absence of caveats—none of that, "Here's my tentative thinking," or "I'm not sure this will fly, but . . ." And, although Joe is constantly refining his ideas, discarding some, improving others, using a flawed notion as a pathway to a better one, there's never any, "I was wrong," when a concept doesn't fly. This could be hard on the rest of us, because we never knew when Joe had moved on in a new direction; we had to assume he was still hot on the old discarded idea.

A number of people have observed and commented on the fact that while Joe is sitting in a meeting, he's creating those intricate small doodles on the pad placed in front of him. (By the way, I never saw Joe actually bring a pad, or any other papers or books for that matter, into a conference room.) But what has always been significant to me about Joe's doodles is that, although no single doodle ever fills up a whole sheet of paper, I rarely saw Joe put more than one doodle on a page. At some point, he would stop work on the doodle, tear the page off the pad, discard it, and start working on a new doodle on a fresh page.

To me, this symbolizes the absence of clutter in Joe's mind. It's as if his brain is proceeding down one line of thought, which he eventually rejects; from that moment on, he doesn't dwell on it, but instead puts it behind him and moves onto something else. I always marveled at the fact that although Joe's workload was prodigious, with a hundred balls in the air simultaneously at all times, his desk—unlike those of the rest of us—was always free of paper. Joe would read a document once and then toss it into his "out" basket, with the contents fixed firmly in his mind, for later retrieval and accurate reference days or weeks later.

When you worked with Joe, you had to learn to be very crisp. He refuses to sit silently through a long-winded explanation of anything. If you try to be comprehensive, he'll interrupt and throw you off course. He would call in all the time from a car or a meeting to ask, "What's up?"; all you have time for are the headlines. I learned that you have to come to the bottom line right away if you want to keep his attention.

And that's because Joe is so pragmatic and goal-oriented. He's always thinking about how best to move the process forward. He doesn't spend much time arguing over abstruse legal questions or attempting to justify actions taken—it's always, "What's the next step? What issue do we have to face up to now?"

But as tough as Joe could be on the professionals around him, he's absolutely wonderful with clients. All that brusqueness disappears, as he patiently leads CEOs and corporate boards step by step down some difficult roads. Joe's a great believer in keeping clients involved at all times—constantly checking in with them, briefing them, cultivating the interaction that lies at the heart of a good lawyer-client relationship. And the clients, needless to say, have always sworn by him.

Not that anyone would have mistaken Joe for compassionate. He may have mellowed some now, but in the good old days he was one tough cookie—although there was one moment, in all those years we were together, that he let his guard down just a little and showed me another side of himself. It happened at a crucial juncture in the Federated fight, when we had just reached a deal with Macy's. I had stayed up all night to get things buttoned down; now it was the next morning, and Joe and I were in a cab heading down to Herald Square to meet with the executives of Macy's. As the cab pulled away from the curb, Joe turned to me and must have observed the ravages of an all-nighter on my face. He said—I can still hear the words clearly today, it came as such a shock—"If you want to take a snooze, Jim, I'll wake you up when we arrive." That was about it for compassion.

Joe has always had a complete disdain for consistency. After all these years, I still can never figure out the next thing he's going to say, or what position he'll take on a certain issue. This quality of unpredictability, which we often associate with lesser minds, is truly frightening when combined with brilliance.

It's especially tough on those working for Joe, because there's a constant awareness of being second-guessed. It tends to impair your confidence and judgment, because you're not necessarily thinking "what's right" under the circumstances, but "what will Joe think is right?"—and that's impossible to predict.

I'll give you an instance. At the time of the Paramount *mêlée* in the

early 1990s, a reporter called me to ask for a comment on Marty Lipton's apparent turnaround in that case—representing the poacher, arguing against the pill and lockups—from the defensive posture he had assiduously cultivated in the 1980s. My mind immediately went into overdrive, and my first thought was: how would Joe handle this question?

Well, I thought, that's easy. In a high-profile case like Paramount, where it's easy to be a target for criticism, you stay out of the papers and avoid being quoted—I had heard that so often from Joe I knew it by heart. What's more, you don't want to be quoted questioning the consistency of another lawyer, with whom you'll have to work another day. So, I was appropriately non-communicative, and convinced I was on unassailable ground.

Two days later, Joe was quoted in *The Wall Street Journal* as saying, in effect, "You're goddamn right Lipton switched sides." I'll never learn!

By the way, Joe doesn't limit his unpredictability to others—he's just as hard on himself. I can remember times in the Federated deal when Joe would give me some wording to include verbatim in a press release; then, when he saw the draft of his own words, he'd completely tear it apart—just as if it was something dumb that I'd come up with.

Joe's favorite quote, whenever he would berate me for being too consistent, comes from Emerson—and although Joe only uses the first line, let me give you the whole thing, because I think it sums up Joe's approach to a tee:

A foolish consistency is the hobgoblin of little minds, adored by little statesmen and philosophers and divines. With consistency, a great soul has simply nothing to do. . . . Speak what you think now in hard words, and tomorrow speak what tomorrow thinks in hard words again, though it contradicts everything you said today.

There is, however, one professional area where Joe has always been entirely consistent—and that's when a question of ethics is involved. It wasn't accidental that our firm went through all the craziness of the 1980s—smack in the center of the action, with demanding clients and questionable proposals abounding—without a single black mark against our name. Joe's ethics were absolutely beyond reproach. I never heard him advocate anything that even came close to the line. And in terms of the "smell test" that good lawyers apply to complex schemes, Joe has the fastest proboscis in the East!

One instance comes to mind from many years ago when I was a young partner of the firm. A client of mine was, in effect, being shaken down by a corrupt state official. The client was told that if it didn't take

a certain legitimate-looking action that would indirectly put some money in the official's pocket, then the client wouldn't get a government certificate that it badly needed and fully deserved on the merits. The official's scheme was ingenious and unlikely to raise any eyebrows. And, the client really wanted that certificate.

My nostrils started twitching, but then, as the tale of woe unfolded and the arguments of legitimacy were pressed, I found myself beginning to rationalize—so I decided to consult with Joe. It took him about three seconds to reply, in that laconic, equivocal manner for which he's noted—"FORGET IT!"

Of course, he was right; and afterwards I was ashamed of myself for even bringing the issue to him. I knew damn well how it should come out, but I was trying too hard to see if there was a way to accommodate a client who was being wronged.

The most interesting part of this story is the denouement. When I went back to the client to say that Joe and I strongly advised them not to have any part of this scheme, instead of complaining about their goody-two-shoes legal advisors, the executives involved seemed genuinely pleased that we had come out forcefully against it. They didn't like the scheme any more than we did, but they just needed to be told it was wrong by someone with moral authority in such matters. And I've never forgotten this lesson I learned from Joe—that this someone can, and should, be the lawyer.

So, anyway, that's my take on the guy we're honoring tonight. In the vernacular of the old Reader's Digest profiles, Joe remains the most unforgettable character I've ever met—a total original—and the best lawyer of them all. It's a privilege to be with all of you here, to celebrate the "grand young man" of M&A. Here's to you, Joe.